IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14379 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHAVDA ISHWARSINH PRAHLADSINH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14379 of 2004

MR RC JANI for Petitioner No. 1

MR KP RAVAL, AGP for Respondent No. 1-3

NOTICE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 11/01/2005

ORAL JUDGEMENT

Rule. Shri K.P.Raval, Learned AGP waives service of rule on behalf of the respondents. With the consent of

the parties, the matter is taken up for final hearing today.

2. In this petition under Articles 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Revisional Authority, State of Gujarat i.e. the Secretary, Revenue Department (Appeals), State of Gujarat, Ahmedabad dated 28.6.2004/10.9.2004 passed in Revision Application No.12 of 1998 in dismissing the same and confirming the order passed by the Collector dated 29.11.1996 by which the application of the petitioner for change of user of the land in question is rejected.

3. It appears from the record that the petitioner was granted land in question by the Collector, Mehsana by order dated 22.11.1989 and certain conditions were imposed with regard to the user of the land, more particularly, condition no.2 which says that the land in question is to be given to the petitioner for the purpose of flour mill as well as plastic business and no other industry is permissible. It is the case of the petitioner that as it was not possible for the petitioner to run the business of flour mill and/or plastic business in the land in question, the petitioner submitted an application allowing the petitioner to use for other purpose for which the petitioner has given reasons. The Collector, Mehsana passed order dated 29.11.1996 rejecting the application of the petitioner for change of user on the ground that the land is not used by the petitioner for the purpose for which the land was granted.

4. Being aggrieved and dissatisfied with the impugned communication/order dated 29.11.1996, the petitioner preferred Revision Application before the State Government i.e. Secretary, Revenue Department (Appeals), State of Gujarat which was numbered as Revision Application No.12 of 1998 and the Learned Secretary (Appeals) by its judgment and order dated 28.6.2004/10.9.2004 dismissed the said revision application confirming the order passed by the Collector, Mehsana which has given rise to the present petition under Articles 226 and 227 of the Constitution of India.

5. Shri R.C.Jani, Learned Advocate appearing for the petitioner has submitted that as such, there is no evidence whatsoever by which it can be said that the petitioner has used the land for any other purpose. He has further submitted that even in the order dated 22.11.1989, there is no condition that if the land in

question is not used by the petitioner even for the flour mill and/or plastic business, there will be no breach of condition. He has submitted that the only condition is that the petitioner has to use the land in question for the flour mill and/or plastic business. He has also submitted that as per clause number 14 if there is any breach of condition then the same can be regularised on payment of penalty.

6. Shri K.P.Raval, Learned AGP has tried to support the order passed by both the authorities below and has submitted that as the land is not used for the purpose for which it was granted, there is a breach of condition and therefore, the application of the petitioner is rightly rejected by the Collector confirmed by the State Government in Revision Application.

7. Heard the Learned Advocates for the parties.

8. The land in question was granted to the petitioner by order dated 22.11.1989 and one of the conditions, more particularly, condition no.2 is that the petitioner has to use the land in question for flour mill and/or plastic business. As it was found by the petitioner that it is not possible for the petitioner to use the land in question for flour mill and/or plastic business due to financial crunch, the petitioner submitted an application for change of user and only on the basis that the land is not used for the purpose for which the land is granted, the application of the petitioner is rejected. It is true that while granting the land, one of the condition is that the petitioner has to use the land in question for flour mill and plastic business only and no other industry is permissible but as such there is no condition by which it can be said that subsequently for valid reasons, the petitioner's appropriate application for change of user cannot be considered. On the contrary, there is a condition that if there is any breach of any of the conditions then without affecting the said breach, the Collector can continue the grant on payment of penalty and on payment of the nonagricultural assessment. In the present case, the petitioner has without committing any breach of condition has moved an application for change of user and only on the basis of that application, the Collector has come to the conclusion that there is a breach of condition i.e. the land is not used for the purpose for which the land is not granted. As such, in view of the fact that the petitioner was not in a position to carry on the flour mill and/or plastic business, it has necessitated the petitioner to move an appropriate

application for change of user. If the petitioner had without applying for the permission used the land in question for other purpose other than for which the land is granted then there would be a breach of condition which could have been regularised by the Collector on payment of penalty. Instead of that, the petitioner had applied for change of user before committing breach of condition. Under the circumstances, the reasoning given by the Collector, Mehsana in rejecting the application of the petitioner for change of user is not germane and is not reasonable and the same requires to be quashed and set aside and even the order passed by the Revisional Authority confirming the order passed by the Collector, Mehsana is also required to be quashed and set aside accordingly and the Collector, Mehsana is required to be directed to decide the application submitted by the petitioner for change of user on its own merits and he may consider for imposing of the penalty and/or any other amount which is to be paid by the petitioner as if there is a breach of condition which the petitioner has agreed to pay. For the reasons stated above, the judgment and order passed by the Revisional Authority as well as the order passed by the Collector are quashed and set aside. The Collector, Mehsana is directed to decide the application submitted by the petitioner afresh in light of the observations stated hereinabove and to consider the change of user even on payment of penalty and/or any other amount to be paid by the petitioner which the petitioner has agreed to pay on its own merits as early as possible preferably within a period of six months from the date of receipt of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah, J)
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